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SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, A.D. 1956.

No. 257.

GORDON P. HAYNES AND ESSIE M. HAYNES,

Petitioners,

versus

UNITED STATES OF AMERICA,

Respondent.

BRIEF ON BEHALF OF PETITIONERS.

I.

OPINIONS OF THE COURT BELOW.

(1) DISTRICT COURT: *Gordon P. Haynes and Essie M. Haynes vs. United States of America*, 139 F. Supp. 671.

(2) CIRCUIT COURT: *United States of America vs. Gordon P. Haynes and Essie M. Haynes*, 233 Fed. 2d 413.

II.

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

Date of Judgment to be Reviewed: April 20, 1956. (R. 125.)

Statutory provision believed to confer on this Court jurisdiction to review the judgment in question: 28 U. S. C. A. Sec. 1254 (1). (Appendix A; page 23 of this Brief.)

III.

STATUTE INVOLVED.

The statute involved is: Internal Revenue Code of 1939, Section 22 (b) (5) (26 U.S.C.A. Sec. 22 (b) (5). (Appendix B, page 23 of this Brief).

IV.

THE QUESTION PRESENTED FOR REVIEW.

The question for decision is:—Whether amounts paid to the taxpayer in 1949 by his employer during sick leave and pursuant to his employer's disability benefit plan are exempt from taxation as amounts received through health insurance within the terms of Section 22 (b) (5) of the Internal Revenue Code of 1939.

The District Judge held that they were. (R. 52-53.)

The Court of Appeals held that they were not. (R. 107.)

V.

STATEMENT OF THE CASE.

This action was brought in the United States District Court for the Northern District of Georgia, Atlanta Division, by plaintiffs, to recover the sum of $318.44 which they allege was illegally collected from them. Jurisdiction was invoked under the provisions of 28 U.S.C.A. Sec. 1346 (a) (1). (R. 1.)

Plaintiffs contend that $2,100.00 paid to plaintiff, Gordon P. Haynes, by the Southern Bell Telephone and Telegraph Company was sickness benefits, and as such was exempt from taxation under Title 26, U.S.C.A. Sec. 22 (b) (5). Plaintiffs contend that their timely claim for a refund was disallowed by the Commissioner of Internal Revenue and that they were so notified on June 2, 1954. (R. 1-2.)

Defendant denies that during 1949 plaintiffs paid to Marion H. Allen, Collector of Internal Revenue for Georgia, by means of withholding tax, $318.44 representing income tax on the sum of $2,100.00 paid to plaintiff, Gordon P. Haynes, as sickness disability benefits for the year 1949 by the Southern Bell Telephone and Telegraph Company, but admits that plaintiffs paid $723.84 in income tax liability for the year 1949. (R. 3.)

Defendant admits that plaintiffs filed a claim for refund and that the same has been disallowed by the Commissioner of Internal Revenue and that plaintiffs have

been so notified, but denies that said tax was erroneously assessed or illegally collected. (R. 3.)

The plaintiff, Gordon P. Haynes, in 1949 had been employed by the Southern Bell Telephone and Telegraph Company, hereinafter referred to as "the company" for more than 25 years and in that year he became sick (R. 7-8) and was paid in sick disability benefits under the Plan hereinafter described, the sum of $2,100.00 from which the company withheld the sum of $318.44 for income taxes on such sum and the $318.44 was paid by the company to the Collector of Internal Revenue. (R. 5-6.) The plaintiffs filed a claim for refund alleging that such amount was improperly withheld and this claim for refund was thereafter rejected by the Commissioner of Internal Revenue and the present action was instituted by plaintiffs to recover the $318.44 and the interest. (R. 8.)

In 1913 the company inaugurated a "Plan for Employees' Pension, Disability Benefits and Death Benefits" which plan, with amendments, is still in force and effect. (Pl. Ex. 1, R. 5, 56.) Under this plan the company "undertakes to provide for the payment of definite amounts to its employees when they are disabled by accident or sickness, or when they are retired from service, or, in the event of death, to their dependent relatives." (Pl. Ex. 1, R. 5, 62.) The plan provides, *inter alia*, for sickness disability benefits to all employees of more than two years service with the company and the payments generally begin upon the eighth day of absence from work (Pl. Ex. 1, R. 5, 72), but when an employee has received benefits and is absent on account of illness within two weeks of the ter-

mination of benefits, the payments begin as of the first day of absence. (Pl. Ex. 1, R. 5, 73.) The amounts paid and the length of time over which the payments are made are governed under the plan by the length of service of the employee with the company and under such provisions of the plan an employee, such as plaintiff here, who had a term of employment with the company of 25 years, or more, may receive as sickness disability payments full pay for a total period of 52 weeks. (Pl. Ex. 1, R. 5, 72.)

Under the plan sickness disability benefits are not payable during a period of lay-off (Pl. Ex. 1, R. 5, 81), and no employee has a right to such benefits after his discharge. (Pl. Ex. 1, R. 5, 79.) The plan is subject to change and may be terminated, but such termination can not affect rights to which an employee had become entitled prior to such termination. (Pl. Ex. 1, R. 5, 79.)

The plan is administered by a general committee of five members who are appointed and serve during the pleasure of the board of directors of the company and the committee is responsible to the board and the president of the company. (Pl. Ex. 1, R. 5, 63.) The members of such committee are appointed from the operating heads of the various departments of the company and the majority of their time is devoted to company affairs and not over three hours a week is devoted by the members of the committee to committee work. (R. 11-12.)

All employees, regardless of his or her salary, except those who have worked less than two years with the

company, are covered by the plan (Pl. Ex. 1, R. 5, 72), and they are not required to take a physical examination or to make application in order to receive benefits under the plan. (R. 23.) The plan only covers employees of the company (R. 14) and no contribution of cash or other thing of value is required or made by employees in order to be covered by the plan and to receive benefits thereunder, except services rendered by the employees in their employment. (R. 15.)

Employees receive their regular pay during the first week of absence on account of illness and subsequent weeks are paid under the plan, (R. 15), and all such payments, under the Plan are listed on the company's records as sickness benefits. (R. 17.) In case of absence of an employee for sickness, the sickness disability payments to such employee are authorized by the secretary of the committee subject to later approval or ratification by the committee and the committee is authorized by the board of directors to approve payments to employees in excess of those provided for in the plan, and such payments are made in needy cases. (R. 14-16.) The committee also has authority to and make loans to employees from time to time (R. 18-19), and has authority to deviate from the plan in other respects. Since the inception of the plan the company has never been sued for sickness disability benefits thereunder. (R. 18.)

The company maintains no fund from which disability payments are made and all of such payments are charged to operating expenses. (R. 16.) There is no trust or as-

sociation which administers the disability benefits under the plan other than the Committee, and no reserve is set up on the books of the company against which disability payments are charged: (R. 16-17.) There is no insurance reserve (R. 17) and unlike payments to the pension fund under the plan, the cost of sickness benefits is not determined by contributions on an actuarial basis. (R. 18.) Payment to an employee for time actually worked and for sickness benefits in a single bi-weekly pay period is generally in a single check, (R. 25), and in cases where an employee works part of a day and is entitled to sickness disability benefits for the remainder of the day, the entire amount paid to him for that day is charged to his regular salary account. (R. 17.) Approximately 2% of the company's payroll in 1949, the year involved here, comprised sickness disability benefit (R. 18) and a total of $1,700,000.00 was paid as such benefits under the plan in that year. (Df. Ex. 1, R. 12, 89.)

The company is not licensed by the State of Georgia to engage in the business of health insurance. (Df. Ex. 7, R. 44, 102.)

Private insurance companies who write health insurance do not usually insure a person for more than 80% of the salary earned by such person, and in group health insurance the limitation is approximately 2/3 of the salary earned, the reason for this being to provide incentive for the insured to return to work as soon as possible, (R. 38-39), and it is not the practice of such companies to issue policies where the period of time during which benefits are to be paid depends upon the length of time the person has held a particular job or position. (R. 41-42.)

The case was tried in the United States District Court for the Northern District of Georgia, Atlanta Division, which Court rendered an opinion and judgment in favor of the plaintiffs. (R. 48-53.)

The case was carried to the Court of Appeals for the Fifth Circuit by the defendant, and was reversed. (R. 103-107.)

VI.

SUMMARY OF ARGUMENT.

If the payments made to the taxpayer while he was unable to work had been made under the provisions of a commercial health insurance policy written by a company which was in the insurance business, there would admittedly have been no question about whether or not such payments were subject to taxation:—they would *not* have been subject.

Therefore, the question is:—Whether or not the employer's "Plan" in the instant case is "insurance", so as to bring the payments under it within the exemption set out in Section 22 (b) (5) of the Internal Revenue Code of 1939.

These four facts are clear and basic:

(1) The employee in this case was not entitled to the monies he received while away from work due to sickness except through the provisions of the "Plan", which constituted a contract between employer and employee

for the employer to assume the risk of the employee's loss of income due to sickness.

(2) The Employer had a right to protect its employees from loss of income in case of sickness. It could have done this by taking out a policy with a commercial insurance company or it could self-insure the risk, as it did here, and as in the case of Workmen's Compensation under direct statutory authority.

(3) The Company's self-insured "Plan" has all of the attributes of a contract of insurance.

(4) Whether the Company purchased a policy to cover this risk or self-insured against it is a difference without substance.

VII.

ARGUMENT.

The "Plan" in the Instant Case is a Contract of Insurance.

A contract, whereby one party, for an adequate consideration, undertakes to indemnify another against loss arising from certain specified contingencies, is an arrangement dating from ancient times. The fact that we now call this sort of contract "insurance" does not change the fundamental characteristics of it; nor does the fact that, in the interest of saving time in our rapidly-moving world, the usual provisions of such a contract are pre-printed in a form known as an "insurance policy" limit all such indemnity agreements to this pre-printed form.

Such an arrangement is still a contract of indemnity, in whatever form it may appear.

The primary essential of a contract of insurance is the presence of a risk of loss. The transfer of that risk is essentially the subject of the contract by which the insurer, in return for a consideration paid him by the insured, assumes this risk. When such a risk is assumed by one of the parties to the contract, whatever form the contract may take, it is in fact a contract of insurance.[1]

The agreement between the Southern Bell Telephone and Telegraph Company and its employees, called the "Plan for Employees' Pensions, Disability Benefits and Death Benefits" is such a contract of indemnity, and is as much entitled to be called "insurance" as any other indemnity contract.

Basically, a contract is an agreement which creates an obligation. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.[2] The Southern Bell Telephone and Telegraph Company and Gordon P. Haynes, petitioner herein, were certainly parties competent to contract. The subject matter of the contract was: pensions, disability benefits, and death benefits of employees. The consideration was the service and labor rendered by the employee to the employer, as well as the increased efficiency of the employee resulting from a better morale.[3] The knowledge

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[1] Cooley, Briefs on Insurance, p. 7, Second Edition, 1927.
See also: 44 C.J.S. p. 471, "Insurance".
Old Colony Trust Co. vs. Commissioner of Internal Revenue, 102 F. 2d 380;
Epmeier vs. United States, 199 F. 2d 508.

[2] 17 C.J.S. p. 310, "Contracts".

[3] *Epmeier vs. United States*, *supra*.
Adams vs. Pitts, 140 F. Supp. 618.

on the part of the employee that the company for which he worked had his welfare in mind and would pay him disability benefits when he was sick and unable to work, would give him a sense of security and confidence in his employer, and thereby would tend to increase his morale and cause him to work harder. The additional knowledge that the longer he worked for the company the larger his disability benefits and other benefits would be, might constitute a large factor in any contemplated change of employment, and would reduce the turn-over of employees which is one of the big problems of large companies today.

The Plan was an undertaking on the part of the Employer, a copy of which was given to each employee on entering the service of the company. (Pl. Ex. 1, R. 5, 61.) The employee was obligated to work for the company in order to be eligible for benefits, and the company was obligated to pay the benefits for which the employee became eligible. The Plan is certainly a valid and binding contract. It is true that no suit has ever been brought to enforce the payment of benefits under the Plan, but this fact merely indicates that the company has recognized and discharged its obligation under the contract without having to be compelled by the Courts to do so.

One of the most generally accepted definitions of insurance is that given in a Massachusetts case, in which the court says that a contract of insurance is an agreement by which one party, for a consideration, promises to make a certain payment of money upon the destruction of or injury to, something in which the other party has

an interest; that in fire and marine insurance, the thing insured is property; that in life or accident insurance, it is the life or health of a person; but that, in either case, neither the times and amounts of payment by the insured, nor the mode of ascertaining or securing the payment of the sum to be paid by the insurer, affect the question of whether the agreement between them is a contract of insurance, the only requisite to constitute such a contract being the payment of the consideration by the one and the promise of the other to pay the amount of insurance upon the happening of injury to the subject, by a contingency contemplated in the contract. The definition of insurance as stated in this decision has been approved in other cases and was adopted by the *Massachusetts Insurance Act of 1887, 63 ALR 713,* citing *Commonwealth v. Wetherbee* (1870), *105 Mass. 149.*

The Amount Paid to the Taxpayer During Illness was Compensation for SICKNESS, not Compensation for Services.

The money paid to the taxpayer in 1949 during illness could not be salary or wages, because wages are paid to an employee for work done, at the end of each two weeks or work (R. 9), and were paid for work actually done for the employer, and were paid for the time the employee was actually at work. Disability benefits were paid while the employee was not at work; the Plan specifically provides: "Employees shall not be entitled to receive sickness disability benefits for time for which any wages are paid them by the Company." (Pl. Ex. 1, R. 5, 73.)

The disability payments are not always the same amount of money which the employee would have earned in wages if he had been working. It is only after the employee has been with the Company 25 years that he is entitled to benefits of an amount equal to his wages. (Pl. Ex. 1, R. 5, 72.)

The government has confused compensation for *sickness* with compensation for *services*. The benefits paid in the instant case were paid because Mr. Haynes was *sick* and unable to *work* and earn *wages*. His sickness benefits were equal in amount to his wages because he had been working for the Southern Bell for more than 25 years. (R. 7.)

It is necessary, in setting up an insurance plan, to establish some basis to govern the amount of benefit payments and the length of time the payments are to be made. Individuals, in purchasing health insurance, try to buy enough to insure that the payments which they would receive in case of disability are sufficient for their needs. In practice, this amounts to figuring how much of their usual weekly or monthly wages they would have to have in order to keep their family going, and then in purchasing enough health or disability insurance to cover that amount. Since the risk insured against in all health insurance policies is loss of income during disability, the amount of the payments should bear some relation to the wages which the employee would earn if he was working. The Southern Bell has established a basis of the length of time an employee had worked for them, and the amount of his wages or salary at the time he became sick,

in determining the amount of disability benefits he would be entitled to.

It seems to us that the fact that Mr. Haynes had worked for the company long enough to draw disability benefits equal to the amount of his wages, has overshadowed the fact that under the Plan if he had been employed by the company for only five years, he would have been entitled to disability benefits, of full pay for 13 weeks and half pay for 13 weeks, and that is all, even if he was disabled for 52 weeks. (Pl. Ex. 1, R. 5, 72.) If he had been working for the company for less than two years, he would not have been entitled to any disability benefits at all. It certainly cannot be argued that this is the equivalent of wages.

We would like to call the Court's attention in this connection to the fact that, before the first witness was called on the trial of the instant case, Counsel for the Government stated that the Government was prepared to agree that some twenty-one hundred dollars was paid to the taxpayer in this case pursuant to the plan and received by him as sickness disability benefits under the Plan, and the Trial Court held this to be so stipulated by the parties to the case. (R. 6.)

Service and Labor Rendered by the Employee, as Well as the Increased Efficiency of the Employee, was Adequate Consideration to Render the "Plan" a Contract of Insurance.

While premiums are ordinarily payable in cash, the insurer may accept or authorize payment otherwise than in cash.[4]

[4] 44 C.J.S. p. 1323, para. 349, "Method of Payment in General".

Consideration for a contract of insurance is not confined to cash payment. It may be anything of value which may be acceptable to the insurer. In the instant case the service and labor rendered by the employee, and the increased efficiency resulting from a better morale, was adequate consideration to render the Plan "insurance".[5]

Internal Arrangements of Insurance Companies, to Insure that they make a Profit on the Insurance Business, should not be used as Criteria for Determining Whether "Plan" is Health Insurance.

It is conceded that there is no special fund set up by the company from which the disability benefit payments are made, except the General Expense fund, that no reserve is set up on the company's books against which payments are charged, and that the cost of the sickness benefits is not determined on an actuarial basis. These are internal arrangements of companies which are in the business of writing health insurance policies. These companies are in the insurance business for the purpose of making money, and they set up reserve funds and determine the cost of sickness benefits on an actuarial basis, in order to guard against loss of their profit. The fact that the Southern Bell does not handle the technical details of the Plan in the same way an insurance company does, is no reason to hold that the Plan is not insurance. The purpose of the Southern Bell in establishing the Plan was to look after the welfare of its employees, not to make a profit on the arrangement for payment of benefits.

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[5] *Epmeier v. United States, supra.*

The fact that insurance companies may not insure for more than 80% of a person's salary is no reason to say that Southern Bell's Plan is not insurance; nor is it essential that Southern Bell should adopt the policies and cash rates of regular insurance companies.

There is little doubt that Southern Bell could arrange with an insurance company to underwrite the Plan, even to the extent of paying 100% of the employees' salary. The insurance company would merely raise the cost of the insurance to cover the difference. Underwriters will literally insure anything, if you pay what they charge. Their principal concern is to make a profit, and so their rates will be adjusted upwards or downwards to protect them against loss. The company in the instant case probably found that it could provide greater benefits for its employees at a lower cost to the company by self-insuring the plan rather than purchasing a policy from an insurance company to cover this risk.

It is Immaterial that the Southern Bell is not Licensed by the State of Georgia to Engage in the Business of Health Insurance.

This is immaterial, since, in fact, it does insure its employees. The Southern Bell Telephone and Telegraph Company has for many years been officially approved as a self-insurer by the Georgia Workmen's Compensation Board, and while this approval specifically covers the Workmen's Compensation Insurance, it does not specifically exclude sickness benefits.

The legal authority of the Southern Bell Telephone and Telegraph Company to write a contract of insurance is not in question here. The question is:—what is the nature of the contract the company has entered into, and what is the nature of the liability thereunder which it has recognized and paid? It is established law that in proceedings involving federal income taxes the substantive nature of transactions which are fully executed and recognized by all parties in privity therewith may not be attached on the ground of non-enforceability of, or non-compliance with, regulatory provisions of state law. Thus, in the case of *Charlotte Union Bus Station, Inc. vs. Commissioner, 209 F. 2d 586 (CA-4, 1954)*, in reversing the holding of the Tax Court *(19 T.C. 336)*, it was stated as follows:

> ". . . it is elementary that only the parties to a contract may invoke the statute of frauds in respect thereto . . . There is no basis in law or in reason for permitting the government, in order to tax non-existent income, to invoke the statute of frauds and repudiate, on the basis of the statute, contracts which a taxpayer has made in good faith and under which he has surrendered the right to receive the income which it is proposed to tax."

Similarly, in *Francis M. Camp, 21 BTA 962*, and *J. N. Wheelock, et al. vs. Commissioner, 16 T.C. 1435*, where the interest of the taxpayers in the property from which the income was derived was based upon agreements, it was held that the Commissioner, for lack of privity, could not question the title of the taxpayers under the statute of frauds. Here the employer has recognized and

discharged its liability under its contract. The United States may not defeat the employee's suit on grounds which it has neither the privity to urge nor statutory authority to attack. The contract speaks for itself. It and the action of the parties thereunder are the grist for this Court's decision.

It is inherent in the powers of a corporation and its management that they may elect to assume any risks relating to the business and the advancement of the business and welfare of the employees. As a very simple illustration of this, many corporations self-insure liability, fire and many other risks. That a corporation also may self-insure the risk of loss of earnings of its employees in times of disability is but another illustration.

Public service corporations, of which Southern Bell is one, have implied power to establish sickness and accident plans for the insurance of their employees.[6] The erection of a hospital for the care of sick employees is a proper exercise of implied corporate powers.[7]

The "Plan" in the Instant Case has all the Fundamental Characteristics of Health Insurance.

The Plan in this case is a separate document, embodied in a printed pamphlet, a copy of which is given to each employee on entering the service of the company. (Pl. Ex.

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[6] *Harrison vs. Alabama Midland Ry. Co.*, 40 So. 394, 396.
Bedford Belt Ry. Co. vs. McDonald, 46 N.E. 1022, 1023.
Main vs. Chicago, B. & Q. Ry. Co., 70 N.W. 630, 632.
Chicago, B. & Q. Ry. Co. vs. Bell, 62 N.W. 314, 317.

[7] *People ex rel Metropolitan Life Ins. Co. vs. Hotchkiss*, 120 N. Y. Supp. 649, 651.
State vs. Pittsburg, C.C. & St. L. Ry. Co., 67 N.E. 93, 99.

1, R. 5, 61.) It is a part of the employment contract between the company and the employee.

The subject matter of the Plan is compensation to be paid to the employee by the company during periods of disability from accident or sickness, and other benefits. (Pl. Ex. 1, R. 5, 62.)

The risk or contingency insured against is loss of income by the employee during periods of disability due to sickness, with consequent inability to work and earn wages.

The Plan is a contract whereby this risk is shifted from the employee to the company.

After the employee has worked for the company two years, he then becomes entitled to benefits, which are payable as set out in a graduated schedule in the Plan. The payments begin on the eighth calendar day of absence on account of disability, and terminate when the disability ceases or when the period set out in the schedule ends. (Pl. Ex. 1, R. 5, 72.)

The company promises to make the payments set out in the schedule to its employees who are eligible for them, as long as the employees work for the company. The service and labor rendered by the employee to the company, and his increased efficiency due to better morale, has been held to be a sufficient consideration to render the plan a contract of insurance, without payment of any cash premium.[8]

During disability, the employee must have such examinations by a physician as the Committee shall deem

[8] *Epmeier vs. United States, supra.*

necessarily, and must take proper care of himself and have proper treatment. (Pl. Ex. 1, R. 5, 82.)

A claim for disability benefits must be filed within sixty days from the first day of absence on account of sickness, in order to be valid. (Pl. Ex. 1, R. 5, 81-82.)*

In Interpreting Income Tax Statutes, the Courts Look to the Substance of the Transaction Rather than to its Form.

It is a well settled rule of tax law that the substance of transactions will prevail over form.[9]

There is no legal magic in form. The essence of the arrangement must determine its legal character.[10] The name by which the contract is called is not determinative of the question whether it is one of insurance. The nature of the contract depends upon its contents and the true character of the contract actually entered into—that is to say, whether a contract is one of insurance is to be determined by a consideration of the real character of the promise or of the act to be performed, and by a consideration of the exact nature of the agreement in the light of the occurrence, contingency, or circumstances under which the performance becomes requisite.[11]

Time after time, in litigation over income taxes, the government, with remarkable success, has maintained that the Income Tax Law should be construed realistical-

* This subject is set out in the Appendix I of the dissenting opinion of Judge Brown, beginning on page 17 of the Record, but the arrangement of the items by the printer is confusing. We respectfully refer this Court to pages 29 through 36 of the Petition for Certiorari in this case, for a clear statement.

[9] *Weiss vs. Stern*, 265 U.S. 242, 68 L. Ed. 1001.
Commissioner vs. Court Holding Co., 324 U.S. 331, 89 L.Ed. 981.

[10] *Epmeier vs. United States, supra.*

[11] 29 American Jurisprudence, Para. 4.

ly. "Substance, not form" has been its argument. Now, the shoe is on the other foot, and the government wishes to choose form in preference to substance.[12]

The fact that the Government may have to refund some $6,600,000.00 in claims if this Court holds that the funds in this case are exempt from taxation, as pointed out in the Government's Memorandum in this case, is no argument for sustaining the decision of the Court of Appeals for the Fifth Circuit. If, as we contend, the tax on these funds was collected without authority, then the Government was not entitled to it in the first instance, and would only be refunding money which it collected illegally, therefore no loss to the government.

CONCLUSION.

Under all the facts and the law set out in the foregoing brief, and argument, petitioners believe that they are entitled to a judgment holding that said funds are non-taxable, and that the decision of the United States Court of Appeals for the Fifth Circuit, holding that said funds are taxable, is erroneous and should be reversed.

Respectfully submitted,

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[12] *Adams vs. Pitts, supra.*

CERTIFICATE OF SERVICE.

This is to certify that I have served a copy of the Brief on behalf of petitioners on the following persons, by depositing in the United States mail a copy of said Brief in a properly addressed envelope with adequate postage thereon, as indicated below:

1. Hon. James W. Dorsey, United States Attorney, Old Post Office Building, Atlanta 3, Georgia, by ordinary mail;

2. The Solicitor General, Department of Justice, Washington 25, D. C., by air mail;

3. Hon. Harlan Pomery, Trial Attorney, Department of Justice, Washington 25, D. C., by air mail.

This 21 day of January, 1957.

John H. Hudson
Wm. R. Hudson
Attorney for Petitioners.

APPENDIX A.

TITLE 28, U.S.C.A., Section 1254: Courts of Appeals; certiorari; . . . . Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . . . .

APPENDIX B.

INTERNAL REVENUE CODE, Title 26, Sec. 22 (b):

(b) Exclusions from gross income.—The following items shall not be included in gross income and shall be exempt from taxation under this chapter (Sec. 1 to 476 of this Title):

. . . . . .

(5) Compensation for injuries or sickness.—Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 23 (x) in any prior taxable year, amounts received, through accident or health insurance or under workmen's compensation acts, for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness, and amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country;